

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-221894; B-222046; **DATE:** June 4, 1986
B-222960
MATTER OF: Airborne Services, Inc.

DIGEST:

1. Protest against cancellation of invitation for bids, on the basis that all bids were unreasonably priced, is sustained where the protester's bid price was compared to a post-bid-opening, unsubstantiated quote from a previous supplier that was lower than the supplier's own earlier price, lower than the government estimate and lower than the price most recently paid for the item, and where the agency did not consider all relevant factors when comparing the protester's bid price to the last price paid for the item.
2. Request for recovery of bid preparation costs and costs of filing and pursuing the protest is denied where GAO recommends that the agency reconsider the reasonableness of the protester's bid and award the contract to the firm if the reevaluation results in a determination that the price is reasonable.

Airborne Supply, Inc. (Airborne), protests the cancellation by the Defense Logistics Agency (DLA) of invitation for bids (IFB) No. DLA500-85-B-1603, for the procurement of 1,050 right-side sliding door tracks for the UH-1 helicopter. Airborne also protests the subsequent resolicitations of the requirement under request for quotations (RFQ) No. DLA500-86-Q-EW78 and request for proposals (RFP) No. DLA500-86-R-0835. The protester challenges the agency's basis for the cancellation and contends that resolicitation was not proper.

We sustain the protest.

Previous procurements of this item had been conducted on a sole-source basis from the part's original manufacturer, Bell Helicopter Company. The IFB represents the first competitive procurement of the item, which is to be produced in accordance with Bell technical drawings.

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DLA issued the IFB to 61 potential bidders and published a synopsis of the requirement in the Commerce Business Daily (CBD). The agency received two bids: one from Airborne with a unit price of \$52.93, and one from Skyline Industries, Inc., for \$115.00 per unit.

DLA requested that a preaward survey be conducted on Airborne. The survey report recommended that no award be made to Airborne, based on findings that the firm's production control system was inadequate and that delays in its past and current performance were excessive.

The agency report indicates that the contracting officer then discussed the procurement with his division chief and learned that the same part had been procured in March 1985 from Bell Helicopter for \$46.48. Thinking it odd that the item would cost more under a competitive procurement than it had cost when purchased sole-source, the contracting officer telephoned Bell and asked why the firm had not submitted a bid. Bell replied that it had not received the IFB and that, if it had, it would have bid approximately \$35 for the part. The contracting officer subsequently determined that the prices of both bidders were unreasonable, canceled the IFB, and issued RFQ No. DLA500-86-Q-EW78.

Cancellation of the IFB (B-222046)

Airborne argues that its price of \$52.93 was reasonable in light of the prior acquisition history for this item and asserts that DLA's reliance on Bell's hypothetical, post-bid-opening statement that it would have bid \$35 is unreasonable. The protester contends that in October 1985, DLA awarded contract No. DLA500-85-C-4877 for a quantity of 795 of the left-side sliding door track to A.G.H. Industries for a unit price of \$68.50, based on an oral solicitation. Airborne states that Bell offered a unit price of \$70.04 under the solicitation and challenges the \$35 quote on this basis. The protester also asserts that the left and right door tracks are virtually identical and require the same manufacturing effort.

The agency, on the other hand, argues that the last price paid to Bell for this part (the right-side door) was \$46.48, that the government estimate for the part was also \$46.48, and that the price difference between this amount and Airborne's bid (approximately 12.3 percent) justifies the cancellation. Furthermore, the agency notes that Bell stated that it would have bid the lower figure of \$35 because of increased competition and a reduction in its

business. The agency does not comment on the protester's representation that the right- and left-side tracks are essentially identical or on the allegation that the agency paid \$68 for the left-side track in October.

Both the agency and the protester recognize the general rule that an IFB may only be canceled after bid opening when there is a cogent and compelling reason to do so, such as where all otherwise acceptable bids received are at unreasonable prices. See IFR, Inc., B-209929, May 17, 1983, 83-1 CPD ¶ 524; 48 C.F.R. § 14.404(c)(6) (1984). Our Office has stated that a determination concerning price reasonableness is a matter of administrative discretion that we will not question unless the determination is unreasonable or the protester demonstrates fraud or bad faith on the agency's part. See Spruill Realty/Construction Co., B-209148.2, Jan. 31, 1983, 83-1 CPD ¶ 102. The agency may base its determination concerning price reasonableness upon a comparison with such factors as government estimates, past procurement history, current market conditions, or any other relevant factors, including any which have been revealed by the bidding. Omega Container, Inc., B-206858.2, Nov. 26, 1982, 82-2 CPD ¶ 475.

The agency points out, correctly, that we have allowed an agency to cancel a solicitation for price unreasonableness where the agency relied on price information obtained from a prior supplier who did not bid under the solicitation at issue. See Stewart-Thomas Industries, Inc., B-196295, Mar. 5, 1980, 80-1 CPD ¶ 175. The protester notes, however, that we have also found such reliance unreasonable in a case involving a fact pattern closely resembling the facts before us here. In Mil-Base Industries, B-218015, Apr. 12, 1985, 85-1 CPD ¶ 421, we questioned a contracting agency's decision to cancel a solicitation on the basis that the protester's low bid price was unreasonably high where the protester's bid price was compared to a post-bid-opening, unsubstantiated quote by a 1980 supplier that was significantly lower than the supplier's 1980 contract price, lower than the government estimate, and lower than the price paid by the agency in its most recent prior procurement for the item and where the agency's price analysis did not include consideration of all the factors relevant to the bid's reasonableness.

Here, too, we question the agency's acceptance of Bell's hypothetical \$35 bid as realistic. While we are unable to determine conclusively from the record whether the sliding door tracks for the left and right sides, which apparently are procured separately, are identical or at least so similar

that they should cost the same amount, the protester's statement that the two parts are "as similar as right and left shoes" is unchallenged. We therefore assume that the October 1985 procurement for the left-side track provides pricing information that is relevant to this acquisition of right-side units. In our opinion, Bell's bid price of \$70.04 under the October solicitation casts serious doubt on the realism of a bid at a unit price of \$35. Furthermore, even considering the earlier March 1985 acquisition for \$46.48 (which involved the right-side door), we still question the realism of the \$35 figure since it is approximately 25 percent lower than the most recent price paid to Bell and is at least potentially self-serving (having been tendered only after Bell was asked why it did not respond to the IFB).^{1/}

We also question whether all relevant factors were considered in comparing Bell's previous \$46.48 price with Airborne's \$52.93 bid. We note, in this connection, that the delivery terms for the March acquisition were f.o.b. origin, whereas the terms for the current IFB were f.o.b. destination. Therefore, Airborne's \$52.93 bid price included shipping charges not included in the previous purchase from Bell. Furthermore, since the current IFB included a clause providing for bids based on the rent-free use of government production and research property to be evaluated by adding a factor to reflect this advantage and Bell's prior price of \$46.48 apparently was so based, the use of the \$46.48 figure without any added factor is not accurate. The protester contends that if adjustments were made for the rent-free use of government property and for transportation costs, Airborne's price of \$52.93 well could be lower than Bell's \$46.48 bid, or within 5 percent.

We conclude, in light of Bell's October 1985 bid of \$70 for the left-side door, the unsubstantiated quote of \$35 from Bell followed by Bell's failure to respond to the

^{1/} Although Bell justified this low figure to the agency on the basis of increased competition, we note that Bell was solicited but did not respond to the RFQ issued by the agency after the IFB was canceled. We therefore are unpersuaded by this explanation for the price reduction.

We also note in this connection that the agency's solicitation of Bell under the RFQ negates any possible concern that full and free competition was not obtained under the IFB because Bell did not receive a copy of that solicitation. Bell's failure to respond to the RFQ indicates that the firm apparently was not interested in competing in any event.

subsequent RFQ, and the agency's failure to take all relevant factors into account when comparing Airborne's current bid to the price previously paid to Bell, that the agency has not demonstrated a sufficient basis to reject Airborne's bid. Accordingly, we are recommending that DLA reevaluate the reasonableness of Airborne's bid. If the reevaluation shows that the protester's price is reasonable and the firm is found responsible, it should receive the contract award.^{2/}

Issuance of the RFQ (B-221894) and RFP (B-222960)

Regarding the resolicitation, Airborne protests that the use of an RFQ was improper. The protester maintains that sealed bidding or competitive proposal procedures should have been used. Airborne also contends that the solicitation should have been synopsized in the CBD, as required by the Small Business Act, 15 U.S.C. § 637(c) (1982).

The agency concurs with these arguments and states that DLA will cancel the RFQ and resolicit the requirement using a competitive RFP, properly synopsized in the CBD. The agency has advised us that these steps now have been taken. Airborne contends, however, that the solicitation should not be reissued in any form. In light of our decision sustaining Airborne's protest against the cancellation of the IFB, we agree. We therefore recommend that the agency cancel the RFP.

Claims for Costs

Airborne has also requested reimbursement of its costs for bid and quotation preparation and for attorney's fees in connection with each of its protests. The Competition in Contracting Act of 1984, 31 U.S.C. § 3554 (Supp. II 1984), and our Bid Protest Regulations, 4 C.F.R. § 21.6 (1985), provide authority for our Office to grant bid and proposal preparation costs and the costs of pursuing a protest.

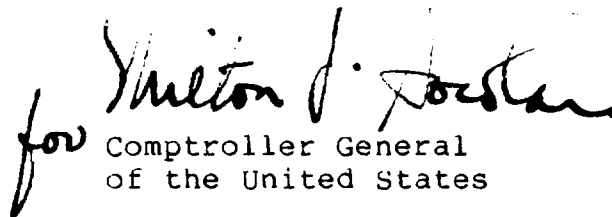
We will, however, only allow the recovery of proposal preparation costs where the contracting agency has unreasonably excluded the protester from the competition

^{2/} We note that Airborne is a small business and, therefore, if it is found nonresponsible, the matter must be referred to the Small Business Administration for possible issuance of a certificate of competency. See Neal R. Gross and Co., B-217508, Apr. 2, 1985, 85-1 CPD ¶ 382.

and no other remedy enumerated in sections 21.6(a)(2-5) of our Bid Protest Regulations is appropriate. 4 C.F.R. § 21.6(e). One of the remedies enumerated in the regulations is the award of a contract consistent with statute and regulation, see 4 C.F.R. § 21.6(a)(5), which is what we have recommended here. Therefore, the recovery of proposal preparation costs is inappropriate. See Galveston Houston Co., B-219988.4, Nov. 4, 1985, 85-2 CPD ¶ 519.

Further, our Regulations limit the recovery of the costs of filing and pursuing a protest to situations where the protester is unreasonably excluded from the procurement, except where this Office recommends that the contract be awarded to the protester and the protester receives the award. 4 C.F.R. § 21.6(e). Since we have recommended that the agency reconsider the reasonableness of Airborne's bid and award the contract to the firm if the reconsideration results in a determination that the bid is reasonable, we consider the request for these costs to be premature. See The Analytic Sciences Corp., B-218074, Apr. 23, 1985, 85-1 CPD ¶ 464.

The protest is sustained.

for 
Comptroller General
of the United States